

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

LEMUEL DON McCOY,)
vs. Petitioner,) NO. CIV-05-695-T
JOHN W. WHETSEL,)
Respondent.)

ORDER

Petitioner, a state prisoner appearing *pro se*, brought this action seeking habeas corpus relief and requesting a preliminary injunction ordering his immediate release from incarceration. In accordance with 28 U.S.C. §636(b)(1)(B), these matters were referred to United States Magistrate Judge Robert E. Bacharach for initial proceedings.

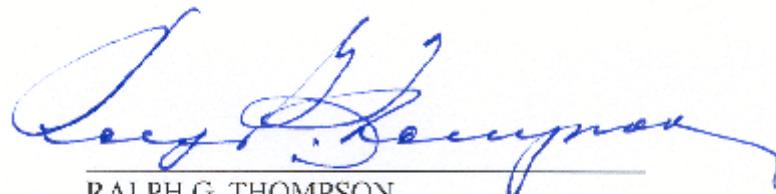
On July 29, 2005 the magistrate judge filed a Report and Recommendation [Doc. No. 10] in which he recommended that the complaint be dismissed without prejudice to the filing of a new complaint because the record shows that petitioner did not exhaust his state court remedies prior to filing this action. The magistrate judge filed a second Report and Recommendation [Doc. No. 11] on July 29, 2005; therein, he recommended that the request for a preliminary injunction be denied.

In each Report and Recommendation, the magistrate judge advised petitioner of his right to file objections to same and set a deadlines of August 18, 2005 for filing objections to each Report and Recommendation. The magistrate judge further expressly cautioned petitioner that a failure to timely file

objections would result in a waiver of his right to appellate review of the matters determined in each Report and Recommendation.

To date, petitioner has not filed an objection to either Report and Recommendation; neither has he sought an extension of time in which to do so. Therefore, the Report and Recommendation recommending dismissal of this action [Doc. No. 10] is adopted as though fully set forth herein. The action is dismissed without prejudice to the filing of a new action following the exhaustion of state remedies. In addition, the Report and Recommendation recommending denial of the preliminary injunction [Doc. No. 11] is adopted as though fully set forth herein.

IT IS SO ORDERED this 25th day of August, 2005.



RALPH G. THOMPSON
UNITED STATES DISTRICT JUDGE